REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1-53 stand rejected under 35 U.S.C. §103 for obviousness based on Schroderus and Shively. This rejection is respectfully traversed.

Schroderus describes sending a real-time data item from a sending terminal to a number of receiving terminals where each receiving user terminal acknowledges the reception of the item by sending an item acknowledgement report after its detects the end of the item. The acknowledgement report may be sent after a successful reception of the item, unsuccessful reception of the item, or in both cases. The Examiner points to the abstract and paragraphs 8-13, 25-27, and 45 of Schroderus as allegedly teaching the claim feature "compensating for the delay time associated with establishing the real-time, interactive connection." Applicants have reviewed these portions of Schroderus and find no teaching of delay compensation. In fact, these sections of text do not even address the issue of delay. The Examiner is requested to identify the (1) where Schroderus describes the claimed delay and (2) where Schroderus describes compensating for that claimed delay.

The Examiner further admits that Schroderus lacks "providing the digital content information to the second communications device over the established real-time, interactive connection such that, as a result of the delay time compensation, a user of the second communications device receives and can respond to the digital content information sooner than the second device user could without the delay time compensation." The Examiner relies on Shively which describes a paging device which allows for an "ad-hoc" response capability to a paging device while still maintaining the low-power, small size, and low cost characteristics of a conventional paging device. See [0002]. Rather than a "canned response", see [0002], an ad-

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hoc voice response is recorded from the paged person in compressed form in the pager. After storing the compressed response, it is sometime later transmitted. Shively's concern is cost rather than delay. The voice response is compressed to reduce the transmission rate between the pager and the paging network "to a much slower speed so that "the paging network 4 power can be conserved while still allowing for ad-hoc voice response messages. By providing a return link from the paging device (typically in the form of a messaging service rather than a variant of a cell phone service) at a slower speed, the advantageous cost and size of the pager may be maintained." [0023]. Voice compression is not performed to reduce real time interactive delay. Futher, to keep power consumption low, Shively does not compress the voice response and transmit at the same time. Instead, power is saved by inserting a "pre-programmed delay" after the message is recorded before the transmitter is even activated. [0024]. Then the message is sent to the base station in the network at the slower rate.

So Shively actually teaches away from what is claimed. Rather than "compensating for the delay time associated with establishing the real-time, interactive connection," Shively adds delay. Shively's response is not sent in real time, see e.g., "the amount of power required by the pager can be reduced by transmitting the voice at less than a real time." [0005]. So even if Schroderus and Shively could be combined for purposes of argument, that combination fails to teach "compensating for the delay time associated with establishing the real-time, interactive connection" so that "a user of the second communications device receives and can respond to the digital content information sooner than the second device user could without the delay time compensation." The Schroderus and Shively combination fails to disclose the delay compensation as claimed, and actually teaches <u>adding a predetermined delay</u> after recording the voice message and transmitting it.

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The attempted combination of Schroderus and Shively is also improper. The Federal Circuit has consistently held that there must be "some teaching, suggestion, or motivation to combine references." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998). "Stated another way, the prior art as a whole must 'suggest the desirability' of the combination." *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004). In addition, the Federal Circuit *requires* consideration of the problem confronted by the inventor in determining whether it would have been obvious to combine references in order to solve that problem. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 935 (Fed. Cir. 1990). Indeed, the Examiner must show reasons why one of ordinary skill in the art, confronted with the same problem as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. See *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

The Examiner fails to show that either reference addresses the same problem as the inventors in this case. Schroderus is directed to solving a very different problem: "[a] problem with such item-by-item communication is that a strict discipline or protocol is required from the parties in the speech communication, or other type of real-time data communication. Further, especially in group communication, it is difficult to know which the parties of the communication are at each specific moment, and therefore the communication must include spoken questions and acknowledgements." Paragraph 0007. Shively's focus is also very different: sending a voice response very cheaply and at very lower power. Neither reference is concerned with the delays described in the background of the instant application and compensating them so that the sending user has an improved real time interactive communications experience.

The two references also fail to teach additional dependent claim features. For example, claim 5 recites "wherein the compensating includes time-compressing the digital content information until the delay time is compensated for." Shively always compresses the voice response message.

For claim 6, where does Shively teach the claimed buffer? Where does Shively teach that the claimed "determining an amount of information stored in a buffer waiting to be communicated to the second device user, and controlling the rate at which the information is played out of the buffer based on the determined amount?"

For claim 11, where does Shively teach "temporarily increasing a transmission rate of the buffered initial digital content information so that the initial digital content information is transmitted over the real-time, interactive connection faster than the initial digital content information is buffered?" A similar question is posed for the feature recited in claim 15.

For claim 14, nothing Schroderus's paragraphs 11, 12, and 35 or Figure 11 teaches "modifying the playout indicator in the packets to change the rate at which the packets are played out." The RTP header in Schroderus is not modified as claimed.
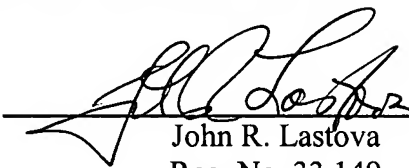
The application is in condition for allowance. An early notice to that effect is respectfully requested.

Respectfully submitted,

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